certainly the law does not imply damages of the description above stated. But we think the evidence was not admissible in any form of pleading. In the case of Hathaway *v.* Barrow, 1 Camp. 151, in an action on the case for a conspiracy to prevent the plaintiff from obtaining his certificate under a commission of bankruptcy, the court refused to receive evidence of extra costs incurred by the plaintiff in a petition before the chancellor. In the case of Jenkins *v.* Biddulph, 4 Bingh. 160, in an action against a sheriff for a false return, the court said they were clearly of opinion that the plaintiff was not entitled to recover the extra costs he had paid; that, as between the attorneys and their clients, the case might be different, because the attorney might have special instructions, which may warrant him in incurring the extra costs, but that in a case like the one before them the plaintiff could only claim such costs as the prothonotary had taxed. And in the case of Grace *v.* Morgan, 2 Bingh. N. C. 534, in an action for a vexatious and excessive distress, the plaintiff was not allowed to recover as damages the extra costs in an action of replevin which the plaintiff had brought for the goods distrained; and the case in 1 Stark. 306, in which a contrary principle had been adopted, was overruled.

These were stronger cases for extra costs than the one before us. The admission of the testimony in relation to the largest item in these charges, that is, for interest paid by the plaintiffs, amounting to more than $9000, is still more objectionable. For it appears from the statement in the exception that the very same account had been laid before the solicitor, and had induced him, as he states in his report to Congress, to make the plaintiffs an allowance in his award for interest, amounting to $6893 93. And to admit this evidence again in this suit was to enable the plaintiffs to recover twice for the same thing; and after having received from the United States what was deemed by the referee a just compensation for this item of damage, to recover it over again from the defendant.

There are several other questions stated in the record, but it is needless to remark upon them, as the opinions already expressed dispose of the whole case. The judgment of the Circuit Court must be reversed.

[For the dissenting opinion of Mr. Justice McLEAN, see App. p. 800.]

EX PARTE DORR.

Neither the Supreme Court, nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness.

An application for a writ of error, prayed for without the authority of the party concerned, but at the request of his friends, cannot be granted.

MR. TREADWELL moved for a writ of *habeas corpus* to bring up Thomas W. Dorr, of Rhode Island, under the following circumstances:—

He stated that Dorr was charged with levying war against the state of Rhode Island, and sentenced to the state's prison for life, in June, 1844; that upon the trial a point of law was raised, whether treason could be committed against a state, but the court would not permit counsel to argue it; that a motion was made to suspend the sentence until a writ of error could be sued out to bring the case before the Supreme Court of the United States, but the court refused to suspend it. He then read affidavits to show that personal access to Dorr was denied, in consequence of which his authority could not be obtained for an application for such a writ. The present motion for a *habeas corpus* was based upon this fact. There was no other mode of ascertaining whether or not it was Dorr's wish that his case should be brought up to this court. Under the 14th section of the Judiciary Act, the power to issue writs of *habeas corpus* was vested in the judges of the United States' courts. 3 Story's Com. tit. *Jurisdiction*, 588, 590, 594, 595, 603, 608, 610, 625.

The case was in itself proper to be brought up under the 25th section of the Judiciary Act, as the decision of the state court was thought to be inconsistent with the Constitution of the United States.

Mr. Justice McLEAN delivered the opinion of the court.

Thomas W. Dorr was convicted before the Supreme Court of Rhode Island, at March term, 1844, of treason against the state of Rhode Island, and sentenced to the state's prison for life. And it appears from the affidavits of Francis C. Treadwell, a counsellor at law of this court, and others, that personal access to Dorr, in his confinement, to ascertain whether he desires a writ of error to remove the record of his conviction to this court, has been refused. On this ground the above application has been made.

Have the court power to issue a writ of *habeas corpus* in this case? This is a preliminary question, and must be first considered.

The original jurisdiction of this court is limited by the Constitution to cases affecting ambassadors, other public ministers, and consuls, and where a state is a party. Its appellate jurisdiction is regulated by acts of Congress. Under the common law, it can exercise no jurisdiction.

As this case cannot be brought under the head of original jurisdiction; if sustainable, it must be under the appellate power.

The 14th section of the Judiciar Act of 1789 provides, "that the courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the Supreme Court, as well as

judges of the District Courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment: Provided that writs of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

In the trial of Dorr, it was insisted that the law of the state, under which he was prosecuted, was repugnant to the Constitution of the United States. And on this ground a writ of error is desired, under the 25th section of the Judiciary Act above named. That as the prayer for this writ can only be made by Dorr or by some one under his authority, and as access to him in prison is denied, it is insisted that the writ to bring him before the court is the only means through which this court can exercise jurisdiction in his case by a writ of error. Even if this were admitted, yet the question recurs, whether this court has power to issue the writ to bring him before it. That it has no such power under the common law is clear. And it is equally clear that the power nowhere exists, unless it be found in the 14th section above cited.

The power given to the courts, in this section, to issue writs of *scire facias*, *habeas corpus*, &c., as regards the writ of *habeas corpus*, is restricted by the proviso to cases where a prisoner is "in custody under or by colour of the authority of the United States, or has been committed for trial before some court of the same, or is necessary to be brought into court to testify." This is so clear, from the language of the section, that any illustration of it would seem to be unnecessary. The words of the proviso are unambiguous. They admit of but one construction. And that they qualify and restrict the preceding provisions of the section is indisputable.

Neither this nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness. And it is immaterial whether the imprisonment be under civil or criminal process. As the law now stands, an individual, who may be indicted in a Circuit Court for treason against the United States, is beyond the power of federal courts and judges, if he be in custody under the authority of a state.

Dorr is in confinement under the sentence of the Supreme Court of Rhode Island, consequently this court has no power to issue a *habeas corpus* to bring him before it. His presence here is not required as a witness, but to signify to the court whether he desires a writ of error to bring before this tribunal the record of his conviction.

The counsel in this application prays for a writ of error, but as it appears from his own admission that he does not act under the au-

thority of Dorr, but at the request of his friends, the prayer cannot be granted. In this view it is unnecessary to decide whether the counsel has stated a case, which, with the authority of his client, entitles him to a writ of error.

The motion for a *habeas corpus* is overruled.

EDWARD CURTIS, PLAINTIFF IN ERROR, *v.* WILLIAM MARTIN AND CHARLES A. COE, DEFENDANTS.

An act of Congress imposing a duty upon imports must be construed to describe the article upon which the duty is imposed, according to the commercial understanding of the terms used in the law in our own markets at the time when the law was passed.

The duty, therefore, imposed by the act of 1832 upon cotton bagging, cannot properly be levied upon an article which was not known in the market as cotton bagging in 1832, although it may subsequently be called so.

THIS case was brought up by writ of error from the Circuit Court of the United States for the southern district of New York.

It was an action brought in the court below by Martin and Coe against Curtis, the collector, for return of duties upon certain importations of gunny cloth, from Dundee, in Scotland, from April to September, 1841.

The facts in the case are clearly stated in the following brief of Mr. *Nelson*, attorney-general, who argued the case on behalf of Curtis, the plaintiff in error:—

This was an action brought by the defendants in error against Curtis, as collector of the port of New York, to recover back the sum of $4543 17 of duties, levied by him on a certain article as cotton bagging, which, they contended, was gunny bagging, a non-enumerated article in the tariff of 1832, and therefore duty free; and the question in the cause was, whether this kind of bagging was cotton bagging within the meaning of the revenue laws? The duties were paid under written protest annexed to each entry.

By the tariff of 1832 it is enacted, that "on cotton bagging three and a half cents a square yard, without regard to the weight or width of the article," of duty shall be collected. This duty, modified by the Compromise Act, was chargeable when the goods were imported.

The imported article, used as bagging for the packing of cotton, is principally manufactured in the town of Dundee, in Scotland, and, like the bagging of Kentucky, was made of hemp, until the material of which the gunny cloth of India is manufactured began to be used. Bagging for cotton has also been made of cotton.

Gunny (Bengalee Gúni) is a coarse, strong sackcloth, manufac-